

TESTIMONY OF THE
DIRECTOR, DEFENSE PROCUREMENT & ACQUISITION POLICY
OFFICE OF THE UNDER SECRETARY OF DEFENSE FOR ACQUISITION,
TECHNOLOGY & LOGISTICS
BEFORE THE UNITED STATES SENATE
COMMITTEE ON SMALL BUSINESS AND ENTREPRENEURSHIP
MARCH 18, 2003

Madam Chairman and Members of the Committee:

Good morning. I am Deidre Lee, Director, Defense Procurement and Acquisition Policy, in the Office of the Under Secretary of Defense for Acquisition, Technology & Logistics. I am here today to discuss the Department of Defense (DoD) small business program and contract bundling.

Small business is a critical component of the Defense industrial base. Eighty-two percent (82%) of all DoD prime contractors are small businesses, which demonstrates how important the small business world is to this Department. Further, small business prime contractors performing on DoD contracts increased to 33,936 in FY 2002 compared to 24,130 small business prime contractors in FY 2001.

DoD accounted for an unprecedented \$59 billion to small business firms in FY 2002, with \$33 billion of this going to small business prime contractors and \$26 billion to small business subcontractors¹. Additionally, DoD dollars going to small disadvantaged businesses, woman-owned small businesses, service-disabled veteran owned small businesses, and in HUBZones increased both at the prime and subcontract level in FY 2002 and achieved record highs. These are significant accomplishments since many of DoD's large dollar procurements are for major defense systems which require the resources of large business prime contractors.

The Department is fully committed to fostering the use of the small business community as prime contractors, subcontractors and vendors; to structuring its requirements to facilitate competition by and among small business concerns; and to avoiding unnecessary bundling of contract requirements that precludes small business participation as prime contractors.

¹ This represents 21.2% of prime contract award dollars and 34.1% of subcontracts.

With regard to contract bundling, the President unveiled a Small Business Agenda in March 2002 that included an initiative for federal agencies to avoid unnecessary contract bundling and directed the Director of the Office of Management and Budget to prepare a strategy for unbundling contracts wherever practicable.

The Department fully supports the President's Small Business Agenda and his initiative to avoid unnecessary contract bundling. The acquisition environment has changed considerably within DoD over recent years as a result of acquisition reform, organizational realignments, base closures, downsizing, and outsourcing. In some instances, DoD combines or restructures mission requirements as a means to gain efficiencies or realign its organization to meet mission demands, resulting in consolidated contracts. In cases where the mission needs are consolidated and small businesses can no longer compete, the consolidation is referred to as a bundled contract². The Department is committed to avoiding contract consolidations that result in bundling unless market research and a benefit analysis

² Bundling is defined in the Small Business Reauthorization Act of 1997 (P.L. 105-135) as the combination of previously separate requirements into a single contract that is unsuitable for award to small business.

support that there are measurably substantial benefits³. In cases where bundling is warranted, the Department is committed to ensuring vigorous small business participation at the subcontract level.

There have been many reports done on the impact of contract bundling on small business, with differing conclusions. The General Accounting Office (GAO) has accomplished several reviews and is just beginning another that will review contract bundling in the Department⁴. We look forward to working with the GAO on this review.

The Office of Federal Procurement Policy (OFPP) issued a report in October 2002 entitled "Contract Bundling: A Strategy for Increasing Federal Contracting Opportunities for Small Business" that includes recommendations to implement the President's initiative to unbundle contracts. The Department participated in the development of the report and had four members on the implementation working group that developed the

³ Measurably substantial benefits is defined in FAR 7.107 as 10 percent of the estimated contract value of \$75 million or less, or 5 percent of the estimated contract value or \$7.5 million, whichever is greater, if the value exceeds \$75 million.

⁴ GAO Reports GGD-00-82 of March 2000; GAO-01-119 of January 2001; GAO-01-746 of June 2001 and new review GAO Code 120220.

Federal Acquisition Regulation (FAR) and the Small Business Administration Regulations coverage. The proposed coverage was published for public comment as proposed rules in the Federal Register on January 31, 2003, with comments due by April 1, 2003. Once comments are considered, final rules will be issued and the coverage will be effective.

I would like to discuss five key changes proposed in the rules that the Department helped develop to implement the OFPP report recommendations. DoD is fully supporting these actions.

New definition. The definition of contract bundling is proposed to be expanded to include orders under a Federal Supply Schedule contract and orders placed against another agency's contract. This is a key change, as use of these types of contractual instruments is increasing and are not currently reviewed by our small business specialists.

Early involvement of the small business specialist. The proposed rules establish thresholds for contracts or orders that require the early involvement of the small business specialist in acquisition planning, unless the acquisition is entirely reserved or set-aside for small business. Involving the small business specialist as part of the acquisition planning team,

will ensure that alternative strategies are considered when consolidation of requirements is likely to have an adverse impact on small business.

Substantial Bundling. The proposed rules revise downward the dollar threshold that signifies when a bundled contract is considered to be a substantial bundle⁵ and adds a requirement that acquisition strategies for substantial bundling identify alternative strategies that would reduce or minimize the scope of bundling and explain why these strategies were not chosen. This change ensures that alternative strategies are seriously considered in acquisition strategies on smaller dollar bundles.

Emphasizes Agency Office of Small and Disadvantaged Business Utilization (OSDBU) Responsibilities. The proposed rules require small business specialists to notify its agency OSDBU if an acquisition strategy involves contract bundling that is unnecessary, unjustified, or not identified as bundled by the agency. The agency OSDBU will also receive copies of justification packages for warranted bundles, at the same time

⁵ FAR 7.107 currently defines substantial bundling to be a bundled contract with an average annual value of \$10 million or more. The proposed rule revises this downward to a total contract value of \$7 million for the DoD.

the justification is submitted to the Procurement Center Representative of the Small Business Administration. Finally, agency OSDBUs are tasked with establishing procedures for small business reviews and conducting periodic reviews to assess whether small businesses are receiving a fair share of procurement opportunities and to assess the adequacy of bundling justification and actions to mitigate its impact on small businesses. The Department's Director, Small and Disadvantaged Business Utilization is developing the procedures the agency OSDBUs will use to conduct these reviews. All these changes will increase the influence of the small business community.

Strengthening Compliance with Small Business Subcontracting Plans. The proposed FAR change requires agencies to modify past performance procedures to require assessment of contractor compliance with goals when a small business subcontracting plan is required. The Department has several initiatives on-going to strengthen its oversight of contractor compliance. Specifically, we are working with the Defense Contract Management Agency to link its assessments of defense contractors participating in the comprehensive subcontracting program to the DoD past performance database. Additionally, the Department is revising its past performance procedures to address the

evaluation of contractor performance to individual small business subcontracting plans.

Finally, there is an additional key recommendation of the OFPP report that is not implemented in regulation, but is vital to implementation of the President's initiative. That is the accountability of senior agency management for improving contracting opportunities for small business. The Department leadership fully supports this recommendation.

With this in mind, the Department is preparing a supplement to the USD(AT&L) memorandum of January 17, 2002⁶ that will be issued once the final rules to implement the report recommendations become effective. In the January 2002 memorandum, the Under Secretary stated his commitment to small business and levied the responsibility on program managers, or other officials responsible for acquisition planning, to ensure small business participation is considered from acquisition planning through program execution. A Benefit Analysis Guidebook was disseminated with the memorandum that includes practical advice on avoiding bundling, outlines how to perform a benefit analysis, and addresses how to mitigate the adverse

⁶ USD(AT&L) memorandum of January 17, 2002 and Benefit Analysis Guidebook can be found at: <http://www.acq.osd.mil/sadbu>

impact upon small businesses when the bundled action has been determined to be necessary and justified. This memorandum is being updated to address the key tenants of the report recommendations.

I would like to reaffirm the DoD commitment to small business and its support of the President's Small Business Agenda. I am available to answer your questions.